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## Appeal Decision

Inquiry held 28 February – 3 March 2017

Site visit made on 3 March 2017

**by KA Ellison BA, MPhil, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 05 July 2017**

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**Appeal Ref: APP/H3510/W/16/3149242**

**Land adjacent to 34 Broom Road, Lakenheath, Suffolk**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Necton Management Ltd against Forest Heath District Council.
  - The application Ref DC/14/2073/FUL, is dated 3rd November 2014.
  - The development proposed is 120 dwellings comprising 15 one-bedroom bungalows; 25 two-bedroom bungalows; 28 two-bedroom houses; 38 three-bedroom houses; 13 four-bedroom houses and 1 four-bedroom bungalow together with associated access, landscaping and open space.
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### Decision

1. The appeal is dismissed and planning permission for 120 dwellings comprising 15 one-bedroom bungalows; 25 two-bedroom bungalows; 28 two-bedroom houses; 38 three-bedroom houses; 13 four-bedroom houses and 1 four-bedroom bungalow together with associated access, landscaping and open space is refused.

### Preliminary Matters

2. Lakenheath Parish Council was granted Rule 6(6) status. It provided written evidence in relation to highways and traffic matters. However, having reached common ground with the Appellant on these issues, the Parish Council made an opening statement to the inquiry but advised it no longer wished to act as a Rule 6(6) party. At the inquiry, a group of local residents raised concerns particularly in relation to education provision, the noise environment and highways issues. Given the extent of the group's involvement in the inquiry, I agreed that it should provide a closing statement.
3. The application originally sought permission for 147 dwellings but was amended to 120 dwellings in October 2015, prior to the appeal being made. At the inquiry, the Appellant proposed to amend the scheme in relation to the location of protective fencing to trees, to make some revisions to the junction with Broom Road and to clarify the highways improvement works beyond the site boundary<sup>1</sup>. I agree with the Council that these amendments are minor in nature. I am satisfied that no interests would be prejudiced if they were taken

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<sup>1</sup> The following amended drawings were provided: 16080/901 Rev C, 16080/002 Rev J, 16080/004 Rev A and 16080/005 Rev A

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into account so that I have determined the appeal on the basis of the amended plans.

4. Prior to the inquiry, the Council set out the reasons why it would have refused permission, had it been in a position to determine the proposal<sup>2</sup>. By the time the inquiry opened, it confirmed that its objections related to:
  - the location of the site in the countryside, outside the settlement boundaries as defined in the Development Plan
  - the adverse impact upon the Maidscross Hill Site of Special Scientific Interest (SSSI)
  - the design of the scheme in terms of its relationship with a line of Scots Pine trees along the eastern boundary of the site
  - effect on the character and appearance of the countryside
  - impact upon the habitat of skylarks and potential impact on bats
  - whether the proposal made appropriate provision with regard to education
  - the impact on living conditions due to noise from the nearby airbase.
5. By the final sitting day, considerable progress had been made in relation to the Planning Obligation. In the light of the discussions which had taken place, I adjourned the inquiry to allow the completed obligation to be submitted in accordance with an agreed timetable and to obtain the views of Natural England (NE) as regards proposed mitigation measures. These were all received and the inquiry was closed in writing.
6. The main parties were given the opportunity to provide additional comments on the implications of the decision of the Supreme Court in May 2017<sup>3</sup> ('Suffolk Coastal'). I have taken those comments into account.

### **Main Issues**

7. The site lies some 3.6km from the Breckland Special Protection Area (SPA). On 14 February 2017, Natural England advised that it maintained its objection to the proposal not only in relation to the impact on the Maidscross Hill SSSI but also the Breckland SPA. Having regard to that letter and the matters addressed at the inquiry, I consider that the main issues in this appeal are:
  - (i) The effect of the proposal on the character and appearance of the surrounding area especially with regard to the location beyond the defined settlement boundary and the relationship of the development to protected trees
  - (ii) Whether the proposal makes adequate provision to meet recreational demands arising from the development, particularly with regard to its impact on the Breckland SPA and the Maidscross Hill SSSI
  - (iii) Whether the proposal makes adequate provision to address other effects arising from the development, especially with regard to the efficiency of the local highway network and the supply of school places
  - (iv) Whether the proposal adequately addresses any impact on protected species, especially with regard to skylarks and bats

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<sup>2</sup> CD3.24

<sup>3</sup> [2017] UKSC 37 dated 10 May 2017

(v) Whether the proposal would provide an acceptable level of amenity for future occupants with particular reference to the acoustic environment

(vi) Whether any material considerations identified would be sufficient to outweigh any conflict with the Development Plan.

### **Planning policy context**

8. In relation to this appeal, relevant policies are contained in the Forest Heath Core Strategy, adopted May 2010 and the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015. Those parts of the Core Strategy dealing mainly with the quantum and distribution of housing were quashed by order of the High Court, in particular policy CS7. The Council has prepared a Single Issue Review (SIR) of policy CS7, along with a Site Allocations Local Plan (SALP). At the time of the inquiry these were at Pre-Submission stage. I am advised that they have since been submitted for examination.

### **Reasons**

9. The appeal site is an agricultural field, some 5.8 ha in size and broadly rectangular in shape, which lies immediately to the east of Lakenheath. There is a row of Scots Pine along part of the eastern boundary, beyond which lies a public footpath and open countryside. This countryside includes Maids Cross Hill which, as well as being a SSSI, is a well-used area of natural green space. There is existing residential development to the north, on the opposite side of Broom Road, as well as to the south. There is also a substantial area of housing beyond the narrow strip of open land which lies along the greater part of the western boundary of the site. Lakenheath itself is a village of modest size which contains a range of services including a primary school. It is identified in the Core Strategy<sup>4</sup> as a Key Service Centre. RAF Lakenheath, described as the largest military air base in Europe, lies to the south east.
10. The scheme would consist of housing grouped around shared driveways and courtyards as well as three areas of open space distributed through the site, all served by a sinuous central spine road.

### **Issue 1: character and appearance**

11. The appeal site has the appearance of an agricultural field. Whilst there is housing to the north, west and south, the land to the east is in active agricultural use. Notwithstanding the presence of this other development therefore, I consider that the site forms part of the existing countryside, which is open in character. The layout would be one where the dwellings along the eastern part of the site faced onto the access roads, so that much of the eastern boundary to the scheme would consist of close-boarded fencing around private garden space, creating an inward-looking layout. The change from open agricultural land to a developed residential area, together with this inward-looking character, would result in considerable harm to this part of the countryside.
12. Development Plan<sup>5</sup> policy DM5 seeks to protect areas designated as countryside<sup>6</sup> from unsustainable development. The appeal proposal does not

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<sup>4</sup> CD2.3 Core Strategy Development Plan Document 2001-2026

<sup>5</sup> CD2.4 Forest Heath and St Edmundsbury Local Plan, Joint Development Management Policies Document 2015

fall within any of the forms of development which would be permitted, nor does it satisfy the relevant criteria. Consequently, I consider that the proposal is in conflict with this policy.

13. The most significant visual feature in the vicinity of the site is the line of Scots Pine along the eastern boundary. The Arboricultural Implications Assessment records that trees 1-69 are all Scots Pine. Whilst it notes that none of the trees are of high value individually, it states that collectively they form 'a large part of the landscape scene'<sup>7</sup>.
14. A Tree Preservation Order (TPO) for this group of trees was confirmed in October 2016. The TPO notes that such tree lines are recognised to be an important landscape feature, characteristic of the Breckland landscape character type. It also notes that the trees are of high visual amenity value particularly in relation to Broom Road and the footpaths in the immediate vicinity. The contribution made by lines of trees such as this to the character of the local landscape is recognised in the National Character Area profile NCA 85, which refers to 'distinctive twisted and gnarled lines and belts of pine trees'. NCA 85 seeks to conserve and enhance these characteristic Scots pine lines<sup>8</sup>.
15. The layout would place development close to these trees. In many cases, the dwellings or garages would sit within the root protection area (especially plots 78, 103 and 104). I take the point that there may be a range of methods which would ensure a reasonable degree of protection during the period that construction was underway so that the trees would not necessarily be harmed during the construction process. It would also be feasible to reposition any structure which was found to intrude to an unacceptable extent into a root protection area. However, the layout of the housing is such that the scheme does not relate well to the pine line in visual terms either, with the trees being relegated to rear gardens if they are within the site or sitting adjacent to close boarded fencing, if they are outside it. This would be an awkward relationship, rather than a positive response to such an important local characteristic.
16. Moreover, as the Arboricultural Implications Assessment notes, this particular type of tree is quite brittle and during windy conditions branches can be damaged or break off completely. It may well be the case that Scots Pine can exist quite happily in urban areas. As is always the case with trees however, their longer term health in a residential setting is heavily dependent on the relationship between the individual tree and its particular surroundings. The twisted appearance of the Scots Pine means that the individual tree is unlikely to be perceived as a visually attractive feature in or close to what would be quite modestly sized gardens. Nor, due to its brittle character, would the tree be regarded as a welcome presence in such proximity to gardens or buildings. To my mind, this would be likely to lead to pressure for works to reduce or remove those trees and, given the characteristics of the trees, such pressure would be hard to resist. It is likely, therefore, that in the longer term the proposal would diminish the contribution which the group as a whole makes to the character and appearance of the surrounding area. In this respect therefore, the proposal would fail to satisfy policies CS5, DM13 and DM22.

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<sup>6</sup> defined in the supporting text as the area outside development boundaries

<sup>7</sup> CD1.7

<sup>8</sup> GD Appx 32

These encourage designs that reinforce local distinctiveness and require development to be informed by the character of the landscape as well as to maintain or create a sense of place by, amongst other things, basing design on an analysis of the existing landscape and fully exploiting the opportunities this presents.

17. For these reasons, I conclude that the proposal would cause considerable harm to the character of the countryside and would be likely to diminish the contribution currently made by the Scots Pine line. As such, it would have a significant adverse effect on the character and appearance of the surrounding area.

## **Issue 2: provision to meet recreational demands**

18. Within Lakenheath, Maidscross Hill SSSI and LNR is the only sizeable area of natural green space. It lies just over 200m to the east of the site. The SSSI is an area of some 45ha notified on the basis of the presence of very dry Breck grassland and associated species on a range of soil types, as well as recolonised areas of former gravel extraction<sup>9</sup>. As recently as 2016, the condition of the SSSI was assessed as unfavourable and in decline<sup>10</sup>. The Appellant suggests this situation is due to a lack of proper management. There is some justification for this, since a requirement for a warden has already been identified. However, the need for such management arises at least in part from the current level of recreational pressure on Maidscross Hill, particularly its use by dog walkers.
19. The Breckland SPA is characterised by an extensive area of grass heath, large arable fields and the largest coniferous forest in lowland England. It holds internationally important populations of stone curlew, nightjar and woodlark. Stone curlew establish nests on open ground provided by arable cultivation in the spring, while nightjar and woodlark breed in recently felled areas and open heath areas within the conifer plantations.<sup>11</sup> Disturbance has been shown to have a particular impact for each of these species. A visitor survey conducted in 2010<sup>12</sup> found that visitors particularly came to the Thetford Forest, a component part of the Breckland SPA, often weekly, with many coming more frequently. Dog-walking was the main activity. It also found that Thetford Forest was used as a local greenspace so that development within 10km would be likely to result in increased access and, therefore, potentially increased recreational disturbance which could adversely affect Annex 1 birds. It concluded that any new housing within this radius should be identified as development that would be likely to have a significant effect as a result of recreational disturbance. It also concluded that the closer new housing was to the Forest, the greater the additional recreational pressure would be. Lakenheath is some 7.5km from the heath and forest components of Breckland SPA<sup>13</sup>.
20. The Accessible Natural Greenspace Study, which forms part of the evidence base for the SIR and SALP<sup>14</sup>, notes that Maidscross Hill SSSI and LNR is sensitive to recreational pressure and has limited capacity for additional

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<sup>9</sup> CD3.19

<sup>10</sup> CD3.20, GD20

<sup>11</sup> GD Appx 19

<sup>12</sup> GD Appx 16

<sup>13</sup> GD Appx 20

<sup>14</sup> GD Appx 20

visitors. Whilst a warden service would increase this capacity, it recommends additional provision of natural open space to divert pressure away not only from the SSSI but also the Breckland SPA. The paper envisages a strategic network of natural green space in Lakenheath, to be provided in association with the proposed housing allocations in the village.

21. The appeal proposal makes provision for some 0.74ha of open space within the site, in three main parcels. Whilst it is agreed that this would be sufficient to meet the relevant standards, the Council draws attention to the shortfall in the availability of larger natural green space in the Lakenheath area.
22. The appeal site is only a few minutes walk from Maidscross Hill and there would be easy access to it via the public footpath which runs along the site's eastern boundary. This suggests that Maidscross Hill would offer a particularly attractive area for residents who were dog owners, especially since there would be little scope within the appeal site itself to allow a dog to exercise in a traffic free setting. Furthermore, given the survey data as to the use of Thetford Forest, it seems to me that the proposed development would be likely to give rise to additional recreational pressures on the Breckland SPA, particularly in relation to dog-walking so that a likely significant effect could not be ruled out, unless mitigation was in place.
23. Within the SALP, the approach for Lakenheath has been developed in consultation with Natural England. It aims to mitigate the impact of increased recreational demand on the Maidscross Hill SSSI and the Breckland SPA by means of a wardening service for Maidscross Hill and improvements to the wider green infrastructure network in Lakenheath (draft policies SA7 and SA8). All allocated housing sites are expected to contribute to these measures.
24. The various exchanges during the course of the inquiry between the main parties and Natural England on the question of mitigation of recreational pressures led to some revision to the measures to be provided. By the end of the inquiry, Natural England's position was that mitigation should take the form of support for a wardening service at Maidscross Hill, contribution to strategic green infrastructure in Lakenheath and avoidance measures within the development itself to act as a barrier to the SSSI<sup>15</sup>. The proposed mitigation, as contained in the Planning Obligation, is in the form of a contribution towards a wardening service for the SSSI (6 hours per week) sufficient to cover a period of either 10 or 30 years and a contribution towards Strategic Green Infrastructure in Lakenheath.
25. The Council takes the view that the recreational impact will persist over the lifetime of the development so that the wardening contribution should be in perpetuity. It draws attention to previous guidance<sup>16</sup> which stated that it could be appropriate to secure maintenance payments in perpetuity towards the provision of facilities which are predominantly for the benefit of the users of the associated development.
26. I accept that recreational pressures will occur over the lifetime of the development. However, I do not agree that the wardening service should be viewed as akin to a maintenance payment. A maintenance payment would be expected to finance the upkeep of specific facilities such as landscaped open

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<sup>15</sup> Email from Natural England, 15 March 2017

<sup>16</sup> Planning Obligations – Practice Guidance 2006

space which have clearly identifiable functions and costs. In contrast, insofar as mitigation of the effects of this development on the SSSI is concerned, I understand that the function of the warden would not generally be to directly remedy the impact of, say, an increased number of dogs being exercised on site. Rather, the post would be primarily educational, seeking to influence recreational choices and attitudes and to support conservation activities by local volunteers. Once that educational or supportive work had been shown to be effective in delivering the appropriate attitudes and behaviours therefore, it would be difficult to identify a specific effect from this development which warranted further mitigation or funding. As such, I do not accept that it is necessary for the payment to be made in perpetuity.

27. That then leaves the question of whether sufficient mitigation would be provided through funding for a 10 or 30 year period. There is no information before me to indicate what length of time would be required for appropriate attitudes and behaviours to become established in a typical local population. However, it would be reasonable to anticipate that it might involve work to ascertain the true extent of the additional pressures on the SSSI and any associated adverse impact, to develop and implement the appropriate educational and volunteer strategies and then to review such strategies to ensure their effectiveness. To my mind, the 10 year option may not allow a sufficient period of time to be confident that this process could be securely established. Consequently, I consider that a 30 year period would be necessary in order to minimise the risk of an adverse effect on the SSSI. In this respect, I note that Natural England advises that 30 years would be sufficient<sup>17</sup>. Bearing in mind the principles set out at NPPF paragraph 118 therefore, it seems to me that in these circumstances it is the 30 year period that would be fairly and reasonably related in scale and kind.
28. There is however the further issue relating to the layout of the proposed development, which is designed to facilitate access to the public footpath. This, in turn, would allow ready access to Maids Cross Hill. I recognise that the very proximity to Maids Cross Hill would make it an attractive destination, thus reducing the scope for effective avoidance measures. Nevertheless, the relationship with Maids Cross Hill SSSI and the implications of recreational pressures on the biodiversity value of that green space are not matters which have been explicitly considered in the Design and Access Statement or the Planning Statement. This indicates to me that the need to have regard to the impact on the SSSI was not a factor which shaped the design approach, such as in relation to the form of the open space provision or the implications of such easy access to the adjacent public footpath. The failure to address the scope for avoidance measures within the layout must therefore count against the proposal.
29. Through the Planning Obligation, the Strategic Green Infrastructure contribution would be paid prior to the commencement of development. This would support the provision of an alternative walking route around the village, with the aim of diverting some of the pressure from Thetford Forest. Natural England advise that this would represent adequate mitigation in relation to the cumulative recreational effects to Breckland Forest SSSI/Breckland SPA. I see no reason to disagree.

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<sup>17</sup> Email dated March 2017

30. Policy CS2 seeks, among other things, to protect areas of biodiversity interest within the District. This is reinforced through the development principles in policy DM2, which include that proposals should not adversely affect sites of ecological interest. Policy DM12 expects all developments to include measures designed to protect biodiversity and mitigate any impacts. As it now stands, I am satisfied that the proposal includes sufficient measures to mitigate the potential impact on the Breckland SPA. However, whilst the wardening contribution and the Strategic Green Infrastructure contribution would go some way towards mitigating the impact on Maidscross Hill SSSI, the proposal does not address the possibility of incorporating design measures which could divert or minimise recreational pressure on the SSSI. To this extent therefore, it fails to satisfy policies CS2, DM2, DM11 and DM12 or to make adequate provision to meet recreational demands arising from the development.

### **Issue 3: Other effects**

31. On highways matters, the Appellant reached agreement with the County Council, as highway authority, as set out in the Highways Statement of Common Ground<sup>18</sup>. Agreement was also reached with Lakenheath Parish Council, which had initially maintained an objection in relation to traffic impact. Nevertheless, technical evidence was submitted on behalf of a third party which disputed the basis for the agreement with the County Council. In addition, although a Statement of Common Ground had also been agreed with the County Council in relation to education, FHDC disputed the basis on which provision would be made for primary education, in the light of the stance taken by Lakenheath Community Primary School that it would not agree to take extra children<sup>19</sup>.

### ***The local highway network***

32. Lakenheath is the focus of a significant level of developer interest for housing. The draft SALP allocates sites for 828 new dwellings. At the time of the inquiry, there were six other proposals for residential development under consideration by the Council which would deliver a higher number of dwellings. The B1112/Eriswell Road T junction (also referred to as the Sparkes Farm junction) was identified as already operating at capacity. Consequently, additional capacity at that junction will be necessary to address the impact of any further residential development in Lakenheath, including the appeal proposal.
33. A study commissioned by the County Council (the Aecom study) indicated two options to signalise the B1112/Eriswell Road junction. One could be delivered within land under the control of the highway authority (Option B) and a larger scheme with more capacity would require land under the control of a third party (Option A). The Appellant relies on this study to support its position that the traffic impact of the appeal scheme could be mitigated through the implementation of Option B.
34. A third party (Elveden Estates) disputes whether option B could in fact deliver the requisite capacity, questioning the robustness of the traffic survey data and whether there is enough space for the scheme to operate<sup>20</sup>. The results of the

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<sup>18</sup> CD1.47

<sup>19</sup> Doc 12

<sup>20</sup> Letter dated 30/6/16 and technical response dated 5/1/17 on behalf of Elveden Estates

Aecom survey, undertaken in 2016, differ from those of an earlier assessment for Elveden Estates which was undertaken in 2015. I note the questions raised regarding the use of data from a Monday and whether the time periods covered the full peak period. However, the County Council as highway authority has confirmed it accepts the results of this study. I am satisfied that it provides a reasonable basis for the assessment of the operation of the junction. In addition, drawings have been provided to demonstrate that there is sufficient space at the junction to accommodate the proposed scheme<sup>21</sup>. I accept, therefore, that the scheme would increase the capacity of this junction, even taking into account that drivers waiting to turn right may not always place themselves so as not to block traffic approaching from behind<sup>22</sup>.

35. The work commissioned by the County Council was concerned with a comprehensive assessment of highways issues associated with several potential development proposals. Option B was assessed as being able to accommodate over 840 dwellings. Even if it were the case that Option B delivered a lower level of additional capacity than predicted, it is clear that it would be more than sufficient to address the impacts of this particular scheme. As such, the proposal would satisfactorily mitigate the traffic impact of the development, as required by policies CS12 and DM45.

### ***The supply of school places***

36. It is estimated that the proposal would generate a need for 26 additional primary school places. However, Lakenheath Primary School advises that the school is at or near capacity and that temporary classrooms would not be feasible so that it would not agree to take extra children. Although one of the other housing proposals before FHDC includes provision for a new primary school in Lakenheath, that has not yet received planning permission. Thus, even though the County Council states that it intends to open the first phase of the new school in September 2018, there is no certainty at present as to when the school will be provided. Consequently, it is likely that any children of primary age residing in the appeal scheme would need to travel to a school out of the village.
37. The Planning Obligation makes appropriate provision for contributions towards the cost of the new primary school. However, given the lack of certainty as to when that school will be delivered, it also makes provision for a School Transport Contribution, on an average cost basis for primary school transport. Since this form of arrangement would be sufficient to ensure that the educational needs of those children could be met, it would not conflict with policy CS13, which expects that suitable arrangements will be put in place to improve infrastructure, services and community facilities to mitigate the impact of development.

### **Issue 4: impact on protected species**

38. Site surveys have identified a small number of skylarks nesting in adjacent fields. As an open field, the site has some potential to accommodate ground nesting birds, including skylark. However, residents confirm that the site is regularly crossed by dog walkers, which would make it less attractive to such birds. In addition, as an area of agricultural land the field would not

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<sup>21</sup> AECOM Technical note dated 26/1/17

<sup>22</sup> WSP Rebuttal note 27/2/17; Create Highways Technical notes 1 & 2 27/2/17 and 2/3/17

necessarily remain in its present, fallow state if the appeal proposal did not succeed so that there is no clear prospect of the habitat being retained in the longer term. As such, whilst the proposal would lead to the loss of some potential habitat, I consider that this is unlikely to have a material adverse effect locally on this species.

39. The Council draws attention to the fact that the biodiversity survey had identified that one of the Scots Pine was used as an occasional summer roost for a single noctule bat. In addition, there is evidence that bats use the pine line for commuting and foraging, which would be consistent with the comments from local residents that they regularly observe bats over the field. I recognise that, given the poor relationship between the row of pines and the proposed housing, there is a risk that the tree containing the roost hole might be lost and the opportunity for foraging might be reduced following the loss of other trees. However, this was thought to be an occasional summer roost rather than one for maternity or hibernation. Since the proposal includes provision of bat roost boxes to be affixed to the trees, as well as additional planting along this boundary, it provides an adequate level of mitigation for the potential risks and does not conflict with policy DM11, which seeks to prevent development which would have an adverse impact on protected species.

### **Issue 5: The acoustic environment**

40. The appeal site lies just to the west of RAF Lakenheath and about 1km from the runway. The most recent assessment of military aviation noise from the RAF<sup>23</sup> places the site within the 72dB contour ( $L_{Aeq16h}$ ), which is the highest of the contours identified. From this, the Appellant estimates<sup>24</sup> that the majority of the appeal site would be about 75dB  $L_{AeqT}$ .
41. On more than one occasion, I was able to observe aircraft taking off, where I noted that their flight path took them across the appeal site at quite low levels. I accept, therefore, that residents' concerns are well-founded as regards the acoustic environment for future occupants and that this would relate not only to noise levels but also to noise vibration. Moreover, the effects would be not only at times when aircraft are airborne but also during Engine Ground Run operations. In addition, the stated intention to transfer the operations from the nearby Mildenhall air base to Lakenheath and station additional squadrons there indicates that the level of aircraft activity and associated aviation noise seems set to increase.
42. The Appellant confirms that even using the latest contours, internal noise levels for properties on the appeal site would be within the limits set out in *BS 8233:2014 – Guidance on sound insulation and noise reduction for buildings*. They would also be below the lowest observable effect level (LOAEL) referred to in the Noise Policy Statement for England and Planning Practice Guidance (PPG). The supporting information does not address the question of noise vibration, which local residents identified as a problem. If this is the case, it is reasonable to expect that future residents would have a similar experience. Even so, I am satisfied that the proposal would afford a reasonable level of amenity in relation to inside living space.

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<sup>23</sup> CD4.2

<sup>24</sup> Doc 8

43. As regards outdoor space, perimeter acoustic fencing would serve to screen noise from ground-based activity and there was some reference to the use of shelters in public amenity areas. Even so, the Appellant acknowledges there would be very limited scope to mitigate airborne noise. The main adverse effects for residents would be in relation to aircraft noise and the contrast with the generally quiet rural surroundings. In the absence of the ability to provide mitigation for the external areas therefore, the proposal would conflict with that part of policy DM2 which expects that sensitive development should not be sited where users would be significantly affected by noise.

## **Issue 6: material considerations and conflict with the Development Plan**

### ***Housing land supply***

44. Within the Statement of Common Ground, it is agreed that it is appropriate to use the housing requirement contained in the Council's Objectively Assessed Housing Need Update, August 2016 and proposed in the SIR. The Appellant suggests that this figure (6,800 dwellings or 340 dwellings per annum) should be accorded only limited weight since it has not yet been tested through the Local Plan examination. I recognise that draft policy CS7 of the SIR can carry limited weight, since the Plan has yet to complete its examination. However, no detailed criticism of the 340dpa figure has been made and no alternative has been put, so I have taken that figure as the basis for my assessment.
45. By the end of the inquiry, there were four remaining areas of disagreement: the Council's use of the 'year forward' method; the calculation of the shortfall; the period over which the shortfall should be made up; and whether particular sites should be regarded as deliverable.

### ***The 'year forward' method***

46. Given the timing of this inquiry, the Council identifies a problem in that an assessment of housing land supply which takes the base date as the last complete financial year (in this case, 31 March 2016) does not provide an up-to-date picture of housing delivery. Drawing on a range of data sources including commencements, completions, Council Tax records and returns from developers, the Council advises it expects to meet its housing requirement for 2016-17. This is based on confirmed data for the period to 31 August, with completions anticipated for the remainder of the year. The five year supply it demonstrates then runs from 1 April 2017.
47. Of necessity, the completions figure for 2016-17 is an estimate, although I note that the extracts provided from building control records and the Council's own monitoring data indicate it has a reasonably sound basis<sup>25</sup>. The Council suggests that this method increases certainty, since sites completed during the relevant year are removed from the supply. However, this method also introduces uncertainty into the process, around anticipated completions. This would be the case irrespective of whether the exercise took place early or late in the relevant year. Moreover, such a figure would need to be reviewed as the year progressed. This would be inconsistent with the process envisaged in NPPF paragraph 47, which refers to an annual update. For that reason, I prefer the Appellant's approach, of using the last complete year of data.

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<sup>25</sup> At the inquiry, the Council confirmed that 248 units had been completed and a further 279 units had been commenced as at January 2017

*The application of a 5% or 20% buffer;*

48. NPPF expects the inclusion of an additional buffer of 5% to ensure choice and competition in the market for land. This increases to 20% where there is a record of persistent under delivery. Although the Council suggested this buffer should not be applied to any shortfall from previous years, such an approach would not be consistent with the spirit of national policy, which seeks to boost the supply of housing and encourage choice and competition.
49. In calculating the shortfall over previous years, the Council applies three figures: 260dpa taken from the Structure Plan up to 2007/8; 320dpa from the Core Strategy for the next three years; then 340dpa from 2011/12, taken from the 2016 update to the Strategic Housing Market Assessment (SHMA). The Appellant contends that the Core Strategy figure should be applied from 2001, to reflect the start date of that plan. However, since under-delivery is a measure of performance it seems to me to be self-evident that the target must be one that is known at the time. I understand that the 320dpa figure was taken from the then Regional Strategy, which was not published until 2008. In those circumstances, the Council's approach is to be preferred.
50. On the Council's figures therefore, there has been a shortfall in 9 of the past 15 years or 5 of the last 10 years.
51. The Local Plans Expert Group recommends that a shortfall in c65% of monitoring years would represent persistent under delivery. On the other hand, the White Paper proposes a housing delivery test aimed at triggering policy responses to ensure new homes are delivered. Amongst the measures proposed is one that if delivery falls below 85% of a housing requirement, local authorities would be expected to plan for a 20% buffer on their five year land supply. In addition, in a recent appeal decision<sup>26</sup> the Inspector concluded that there had been persistent under delivery on the basis of a shortfall in 9 out of the past 14 years.
52. The term 'persistent' indicates a situation which has existed for a prolonged period and looks set to continue. Thus with regard to housing, it requires an understanding of the pattern of past delivery and its likely future course, rather than the application of a simple threshold. The figures provided by the Council indicate that delivery exceeded or was close to the annual requirement during the years from 2005/6 to 2012/13 after which there was a marked deterioration. However, the data for 2016/17, even though not yet confirmed, indicates that delivery will once again be at or close to the annual requirement. That pattern, to my mind, indicates a fluctuation but not a situation where under delivery is a persistent feature. On that basis, I consider that a 5% buffer should be applied.

*Making up the shortfall (the 'Liverpool' or 'Sedgefield' approach)*

53. National policy places particular emphasis on the delivery of housing so that the general aim should be to make good any under delivery from past years as soon as possible, preferably within five years. The case for a longer period should be supported by specific reasons such as around past delivery or future supply. The Council points to the ecological, environmental and planning constraints within the District which mean that the SALP sites will not start to

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<sup>26</sup> APP/H3510/W/16/3139292 Breach Drove

deliver material numbers until 2018/19. Whilst there is some force in this assessment, it is not sufficient reason in my view to justify the case for a longer period of time. Consequently, I consider that the shortfall should be made up within five years.

*The deliverable supply*

54. The Council calculates the supply of sites by three components: unimplemented permissions on large sites at April 2016; unimplemented permissions on small sites at April 2016; and a category of 'other' sites where there is evidence of deliverability. By the end of the inquiry, it identified a supply of 2226 units.
55. In the first category, the Appellant challenges eight sites. However, the Council provides justification for the greater part of this figure, except for an increase of 2 units at Waterwitch House and a reduction of 7 units between the sites at Hall Drive and Red Lodge, leading to a net reduction of 5 in this category. As for the small sites, these form a relatively modest proportion of the overall supply. The Appellant proposes a 10% discount in this category for non-delivery, which would reduce the supply by 23. However, the Council makes no allowance for windfalls and it seems to me that, over a five year period, a comparable number of sites could equally well come forward. I accept the Council's assessment for this category.
56. In the third category, the differences concern a site which has been granted planning permission after the end of the last complete monitoring year and the projected delivery from allocations in the SALP. As with any monitoring activity, the annual update of deliverable sites serves to provide a clear snapshot of the situation at a given point in time. It is not unreasonable for the Council to draw attention to sites which have received planning permission since the base date. However, for the monitoring data to be robust, such sites should not be incorporated into the supply figure until corresponding adjustments can be made to the figure for completions. The figure of 38 dwellings should be removed from this category.
57. As for the allocations in the SALP, the Council confirms it has received updates from the relevant owners or developers, to the extent that it now makes a net addition of 15 dwellings for the period to 31 March 2021. These are based on up to date assessments, so that the figures are reasonably robust. The Council makes no adjustment for SALP sites 12 and 13, even though one site (the District Council offices) is still in use and the other (West of Mildenhall) does not yet have a masterplan in place. Clearly, there are several steps to be taken before housing can be delivered on either site. Nevertheless, it seems to me to be reasonable to anticipate that some level of delivery is likely to be achieved within the next five years and the figures included in the trajectory seem to be a fair reflection of the progress that is likely to be made.
58. Taking the figures contained in the Council's update<sup>27</sup> as the starting point, I consider that the requirement for the period to 31 March 2016 comprises 1700 dwellings plus the agreed shortfall of 389 (2,089). A 5% buffer would represent an additional 104 dwellings (2,193). With a net reduction of 5 dwellings to large sites with planning permission, the supply from this category would be 820 dwellings. There would be no change to the supply of 234

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<sup>27</sup> Doc 19

dwelling from small sites with planning permission. In the category of other sites, there would be a reduction of 38 dwellings for the site which received planning permission after the base date, but an increase of 15 dwellings in the light of the updates received. This would produce a figure of 1,134 (1157+15-38). On those figures, I consider that the supply stands at 2,188, so that it falls slightly short of the requirement plus buffer.

59. Since the Council has not been able to demonstrate a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up to date.

### ***Conflict with the Development Plan***

60. The key Development Plan policy in relation to this proposal is policy DM5, which seeks to protect the designated countryside from unsustainable development. At the inquiry, the Appellant conceded that there was conflict with this policy. The Council contends there is also conflict with policy DM27, a point which was also conceded by the Appellant. However as I read it, that policy is directed towards the opportunities for limited further residential development in settlements. The appeal proposal sits outside of this policy rather than in direct conflict with it. Even so, the conflict with policy DM5 means that the principle of development in this location is contrary to the dominant operative policy of the Development Plan. The settlement boundary for Lakenheath has been reviewed as part of the work on the SALP and no change is proposed in this part of the village. The conflict with policy DM5 therefore carries substantial weight.
61. Further conflict arises in relation to aspects of the design, particularly the effect on the character and appearance of the countryside, the landscape and the relationship with the row of Scots Pine, where there is substantial conflict with policies CS5, DM13 and DM22. Although the Core Strategy pre-dates NPPF, the terms of policy CS5 are consistent with national policy which continues to place great importance on good design and expects proposals to respond to local character. It should therefore carry full weight in the planning balance. The shortcomings in the design represent a clear failure to respond to local character, which should also carry substantial weight.
62. The proposal fails to fully address the impact on Maids Cross Hill SSSI, which brings it into conflict with aspects of policies CS2, DM2 and DM12. Policy CS2 is consistent with more recent national policy in NPPF, which expects policies to minimise impacts on biodiversity, so that should also carry full weight. The Appellant suggests that policy DM10 adopts a less restrictive approach than that in NPPF paragraph 118, since it does not require development to avoid SSSIs. I do not agree. Policy DM10 is clear that development likely to result in adverse effects to a SSSI will not be permitted unless the benefits of development at the site clearly outweigh the impact on the SSSI. As I read it, it maintains the same level of protection as provided at national level. Given the statement that such development will not be permitted, this conflict also carries substantial weight.
63. In addition, there is conflict with policy DM2 in relation to the adverse effect associated with noise from the nearby airbase. However, Lakenheath is identified in the Core Strategy as a key service centre and in the SIR as a location for a substantial amount of new housing. Several sites are allocated in

the SALP. Although this site is closer to the airbase than those in the SALP, it seems likely that the acoustic environment for residents will be comparable. Consequently, I attach only limited weight to the conflict with policy DM2 in relation to living conditions.

64. The Appellant accepts that the proposal is contrary to the Development Plan read as a whole. Moreover, it was accepted at the inquiry that in view of the need to take into account the impact of the proposal on Maidscomb Hill SSSI, this is an example where specific policies in the NPPF indicate development should be restricted<sup>28</sup>. The balance to be applied therefore, is one where the proposal should be determined in accordance with the Development Plan unless material considerations indicate otherwise.
65. Those considerations consist of the benefits of providing 120 homes, of which 36 would be affordable. In the context of the failure to demonstrate a full five year supply of housing land, this should carry substantial weight. The proposed improvements to the B1112/Eriswell Road T junction would address the current capacity issue and create more capacity than is necessary to address the effects of this proposal. That would represent a net benefit. There would also be benefits in terms of the boost to the local economy during the construction period. These matters carry moderate weight.
66. The Appellant also suggests there would be benefits in the form of pump priming the delivery of the new primary school and contributions to Strategic Green Infrastructure. However these provisions mitigate the impact of the proposal rather than provide net gains, so that they are neutral factors in the planning balance.
67. The Appellant draws attention to paragraphs 75-79 of the Suffolk Coastal judgement, especially the reference to the possibility that the rigid enforcement of environmental and amenity policies and designations such as those referred to in NPPF footnote 9 may prevent a planning authority from meeting its requirement to provide a five year supply of housing land. It is suggested that such a situation obtains in Forest Heath, so that less than full weight should be attached to such restrictive policies where there is not a five year supply of housing land. I do not agree. Although there is in-principle conflict arising from the location of the development in the countryside, it is within the Appellant's control to address other sources of conflict with the Development Plan associated with design factors such as the relationship with the Scots Pine line and the adjacent countryside. With regard to amenity and noise, the Council's case was pragmatic rather than rigid and that has been reflected in my own assessment of the proposal.
68. Taking all of these matters into account, I conclude that the material considerations identified would not be sufficient to outweigh the conflict with the Development Plan.

## **Conclusions**

69. For the reasons given above I conclude that the appeal should be dismissed.

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<sup>28</sup> NPPF paragraph 14, footnote 9 and NPPF paragraph 118

*K.A. Ellison*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Michael Bedford QC

|                                                  |                                                           |
|--------------------------------------------------|-----------------------------------------------------------|
| He called<br>Gareth Durrant BA, Dip              | Principal Planning Officer, Forest Heath District Council |
| Samantha Robertson<br>BSc(Hons), DipTP,<br>MRTPI | Senior Planning Officer, Forest Heath District Council    |

### FOR THE APPELLANT:

Timothy Leader, of Counsel

|                                                                                                                                   |                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| He called<br>James Hodson BSc, MSc<br>Melissa Kurihara MPLM,<br>MRTPI<br>Erica Whettingsteel BA,<br>Dip Urb Reg, Dip UD,<br>MRTPI | Director and Principal Ecologist, Eco-Check Ltd<br>Principal Planning Consultant, Urban Vision Partnership Ltd<br>Managing Director, EJW Planning Ltd |
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### INTERESTED PERSONS:

|             |                           |
|-------------|---------------------------|
| Ms H Brown  | Lakenheath Parish Council |
| Mr M Malina | Governor, local resident  |
| Ms A Lane   | local resident            |
| Mrs H Jones | local resident            |
| Mr H Jones  | local resident            |

### PLANS

- 16080/002 Rev J - Proposed Layout Plan
- 16080/004 Rev A - Highways adoption plan
- 16080/005 Rev A - Proposed toucan crossing plan
- 1175 03 001 - Site accessibility improvements plan
- 16080/101 Rev A Proposed Plans & Elevations Cartlodes
- 16080/102 Rev O Proposed Plans & Elevations Garages
- 16080/103 Rev B Proposed Plans & Elevations Colkirk
- 16080/104 Rev A Proposed Plans & Elevations Elmham
- 16080/105 Rev O Proposed Plans & Elevations Elmham
- 16080/107 Rev O Proposed Plans & Elevations Gresham
- 16080/109 Rev O Proposed Plans & Elevations Ickburgh
- 16080/111 Rev O Proposed Plans & Elevations Jaybrook
- 16080/112 Rev O Proposed Plans & Elevations Jaybrook
- 16080/113 Rev O Proposed Plans & Elevations Kessingland
- 16080/114 Rev O Proposed Plans & Elevations Langham

- 16080/115 Rev O Proposed Plans & Elevations Ickburgh/Langham
- 16080/116 Rev O Proposed Plans & Elevations Amner
- 16080/117 Rev O Proposed Plans & Elevations Blakeney
- 16080/118 Rev O Proposed Plans & Elevations Langham attached
- 16080/119 Rev O Proposed Plans & Elevations Morston
- 16080/120 Rev O Proposed Plans & Elevations Ickburgh attached
- 16080/121 Rev O Proposed Plans & Elevations Gresham semi-detached
- 16080/122 Rev O Proposed Plans & Elevations Kessingland
- 16080/123 Rev O Proposed Plans & Elevations Newton
- 16080/124 Rev O Proposed Plans & Elevations Plumstead

#### DOCUMENTS

- 1 Letter of notification
- 2 Appellant's note dated 28 February 2017 – proposed amendments
- 3 Public Health and Housing consultation response dated 18 November 2015
- 4 Email exchange Suffolk CC/Appellant dated 27 February 2017 – Primary Education
- 5 Letter from SCC dated 23 November 2015 – Developer Contributions
- 6 Appellant's Highways Technical Note 1 – dated 27 February 2017
- 7 Email exchange Mr Hodson/Natural England dated 27 February 2017
- 8 Acoustics Technical Note1 – dated 27 February 2017
- 9 Email exchange Ms Whettingsteel/Mr Durrant re: Statement of Common Ground dated 27 February 2017
- 10 Planning Resource 24 February 2017 on the Housing White Paper
- 11 Statement by Lakenheath Parish Council
- 12 Letter from Lakenheath Community Primary School dated 24 February 2017
- 13 Email exchange Suffolk CC/FHDC dated 24 February 2017 and AECOM Rebuttal technical note dated 26 January 2017
- 14 WSP note dated 27 February 2017: Response to AECOM Rebuttal
- 15 Extract from Single Issue Review - settlement boundaries
- 16 Email exchange Mr Hodson/J Smithson, FHDC dated 15 September 2016
- 17 Email exchange FHDC/Natural England dated 28 February 2017; Inspector's ruling and extract from Circular 06/2005
- 18 Revised Appendix 5 to Samantha Robertson's Proof
- 19 Council's Five year supply calculations and supporting evidence for completions 2016-17
- 20 Lakenheath residents: Note on Aviation Noise and Questions to Appellant
- 21 Extract from Housing White Paper – housing delivery test
- 22 Acoustics Technical note 2, dated 1 March 2017
- 23 Appellant's Highways Technical Note 2, response to Inspector's questions – dated 2 March 2017

- 24 Extract from layout plan – trees
- 25 Updated CIL compliance statement – Suffolk County Council
- 26 Updated CIL compliance statement – FHDC
- 27 Unilateral Undertaking dated 15 March 2017 and associated correspondence
- 28 Email from Natural England dated 15 March 2017
- 29 FHDC comments on Unilateral Undertaking (Planning Obligation)
- 30 Appellant's response on Unilateral Undertaking
- 31 Closing comments on behalf of Lakenheath Residents